

1

Introduction

Ten Things You Need to Know

On the first reading of any of the contracts in the NEC3 suite it is readily apparent that there are noticeable differences between them and the many other, standard and more traditional, forms of contract available to the construction supply chain. Possibly because of these differences, the contents of the NEC3 contracts tend to be the cause of misunderstanding, which in turn leads to problems in their use.

By way of an introduction, and as an aid to understanding, listed below are, in the Author's opinion, the top ten things you need to know before using the NEC3 ECC, and before reading this book:

- 1) The NEC3 ECC is not a Partnering contract. It can be made into a Partnering contract by the inclusion of secondary Option X12; without X12, it is simply a contract that promotes and requires collaborative working.
- 2) Collaboration is not optional; there are real and effective sanctions in place to ensure the Parties work together to minimise risk and maximise efficient construction. The Parties, the *Project Manager* and the *Supervisor* must collaborate...or else.
- 3) Whilst collaboration will naturally reduce disputes, the NEC3 ECC recognises that they will occur and actively encourages early submission to adjudication any disagreement that may arise between the Parties. This effectively means that disputes will not perpetuate and the Parties can quickly resolve their issues and move on. Main Option W1, in particular, provides strict timescales within which disagreements must be referred to adjudication.
- 4) Adjudication is compulsory for dispute resolution in the first instance. The Parties are prevented from submitting a dispute to a *tribunal* (i.e. court or arbitration) unless and until it has first been referred to, and decided in, adjudication. Indeed, at least under main Option W1, it would seem a dispute does not exist until it is referred to adjudication.

- 5) As adjudication is compulsory in the first instance, very few NEC3 ECC disputes arrive in court and so very little court guidance exists as to how the various contractual provisions should be interpreted. When the courts have considered disputes under NEC3, one judge made the comment that the contract was “a triumph of form over substance”. This is not exactly a resounding endorsement.
- 6) The terms and conditions are not as clear or as simple as they claim to be. The short sentences and simple phraseology often lead to ambiguity, complexity and confusion where none should exist. It can be a difficult contract to understand and apply.
- 7) Changes and variations, or compensation events as they are called in NEC3 ECC, are assessed on the basis of the effect of the event on both the cost and the date the *Contractor* planned to complete the *works*. If there is a Bill of Quantities or an Activity Schedule, those documents are ignored when making an assessment. Terminal float is owned by the *Contractor*.
- 8) Compensation events can go down as well as up. Their name is a misnomer as it suggests there will always be a positive payment to the *Contractor* in compensation for a change or some other effect of an event. That is not the case; some compensation events will also result in a reduction in Prices.
- 9) There is no separate design and build form; if the *Contractor* is to design any of the *works*, the Works Information simply has to state that. If that is the case, then secondary Option X15 must be incorporated, otherwise the design by the *Contractor* must be fit for purpose.
- 10) It is a contract that is often misunderstood and misapplied, which is unfortunate as, despite some of the criticism above, it is a fundamentally worthy contract filled with provisions that focus on fairness, reasonableness and the effective and efficient completion of the project to the benefit of the Parties.

Author's Note

Those familiar with the NEC3 suite of contracts will know that terms with a specific meaning either have Capitalised Initials or are in *italics*. Those with Capitalised Initials are defined terms and are generally (but not always) defined in clause 11.2. Those in *italics* are identified in the Contract Data (either part 1 or part 2).

Throughout this book I have continued that theme.

On occasion, I have directly quoted parts of the NEC3 ECC where it will aid comprehension, but generally I assume that readers will have a copy of the contract to hand for reference. When explaining a particular provision, I refer to the relevant clause number, sometimes in brackets, to aid that reference.

Generally, I devote an entire chapter to a Section of the NEC3 ECC; this makes some chapters much longer than others, but, I hope, will assist in easy reference for those readers who simply want to “dip in” to read about a particular part of the contract.

Throughout, I have referred to the *Project Manager*, the *Employer*, the *Contractor*, the *Supervisor* etc. as “he”. This follows the convention within the NEC3 suite of contracts and to quote the NEC3:

...words in the singular also mean in the plural and the other way around and words in the masculine also mean in the feminine and neuter.

